

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

June 19, 2001

The Capital Projects and Bond Oversight Committee met on Tuesday, June 19, 2001, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Jodie Haydon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jodie Haydon, Chair; Senator Robert Leeper, Vice Chairman; Senators Tom Buford, and Bob Jackson; Representatives Robert Damron, Paul Marcotte, and Jim Wayne.

Guests testifying before the Committee: Secretary Kevin Flanery, Commissioner Armond Russ, and Jim Abbott, Finance and Administration Cabinet; Bill Hintze, Governor's Office for Policy and Management; Ken Clevidence and Jack Miller, University of Kentucky; Debby Milton, Kentucky Infrastructure Authority; Tom Howard, Office of Financial Management; and Commissioner Kenny Rapier, Department of Parks.

LRC Staff: Mary Lynn Collins, Pat Ingram, Kevin Mason, Nancy Osborne, and Shawn Bowen.

Representative Marcotte made a motion to approve the minutes of the May 15, 2001, meeting as submitted. The motion was seconded by Representative Wayne and passed by voice vote.

Chairman Haydon said there were several items of correspondence in members' folders, one of which was correspondence from Finance Secretary Kevin Flanery indicating his concurrence with the Committee concerning the Statewide Transportation Operations Center proposal. Chairman Haydon said Secretary Flanery has decided to delay design work on the Center until the 2002 General Assembly has reviewed the project.

Chairman Haydon said also enclosed in members' folders was a report from the Kentucky Lottery Corporation (KLC) on probability games as requested at the Committee's meeting last month. He said the KLC had planned to be in attendance today to present a proposed equipment acquisition as well as this report. However, late Friday the Corporation's President and Chief Executive Officer Arthur Gleason asked that the report relating to the acquisition be deferred since the Lottery Board is likely to reconsider the acquisition at its next meeting.

Chairman Haydon said that Western Kentucky University President Dr. Gary Ransdell briefed the Committee last month about the University's plan to transfer ownership of E.A. Diddle Arena to the City of Bowling Green. At that time Dr. Ransdell indicated he would come back to the Committee in June with additional information. Chairman Haydon said the Committee had asked the Finance Cabinet Secretary, the Attorney General, the President of the Council on Postsecondary Education, and the State Auditor to review the proposal and report their findings to the Committee this month. The reports, however, have been delayed until the July meeting to give the University additional time to provide information to the Finance Cabinet Secretary and the other officials.

Chairman Haydon introduced Mr. Ken Clevidence, Associate Vice President for Fiscal Affairs, University of Kentucky (UK), to discuss four projects. Mr. Clevidence introduced Mr. Jack Miller, Manager of Capital Projects, UK.

Mr. Clevidence briefed the Committee on the Administration Building fire that occurred on May 15, 2001. As a result of the fire, the roof collapsed onto the third floor, and part of the third floor collapsed onto the second floor. Most of the damage on the first floor and the basement was from water and smoke.

Mr. Clevidence said, after the fire the University brought in structural engineers to see if it was possible to restore the building. That evaluation is still ongoing, but early reports indicate the building can be restored. Mr. Miller said a contractor has been brought in to evaluate the extent of the damage and to help stabilize the building. Since the fire, the collapsed roof structure and debris from the third floor have been removed. Temporary steel bracing is being installed to stabilize the exterior walls of the building. Mr. Miller said the intent is to leave as much of the first and second floor framing as possible to stabilize the exterior of the building while they assess the condition of the structure.

Representative Wayne asked if insurance will cover the cost of the reconstruction. Mr. Clevidence said they are still in discussions with the insurance representatives, but there is no question that the contractor is totally responsible for the fire. He said they are sure they will be well covered by insurance.

Representative Marcotte asked what type of records were stored in the Administration Building. Mr. Clevidence said fiscal affairs records, legal documents, and files from the President's Office were in that building.

In response to questions from Senator Buford, Mr. Clevidence said the University does not have an estimate as to how much it will cost to repair the building. He noted that certain items that would have to be included in the restoration, such as bringing the building up to code compliance, would not be covered by insurance.

Senator Buford asked if the University's insurance policy covers the actual replacement cost of the building. Mr. Clevidence said he did not have an answer to the question, but would find out.

Mr. Clevidence next reported a \$56,000 privately funded scope increase for the University of Kentucky Arboretum project. This unbudgeted project was approved by the Committee last April at a scope of \$563,385. The scope increase will enable the University to award a construction contract.

Representative Damron made a motion to approve the scope increase. The motion was seconded by Senator Jackson and passed by voice vote. The revised project scope is \$619,385.

Mr. Clevidence next reported a \$155,000 agency-funded scope increase for the Crisp Building Replacement at Paducah Community College. This project was approved in 1998 at a scope of \$2.2 million, and in June of 2000 the Committee approved a \$3 million privately funded scope increase to provide for a Challenger Learning Center. The additional funds will be used to include items in the construction award that were handled as alternates in the bid.

In response to a question from Representative Wayne, Mr. Clevidence said the overrun involves the building's exterior and is unrelated to the Challenger Learning Center.

Senator Jackson made a motion to approve the scope increase. The motion was seconded by Senator Buford and passed by voice vote. The revised project scope is \$5,355,000.

Lastly, Mr. Clevidence reported that the University plans to relocate overhead utilities underground as part of a consolidated project relating to the UK Hospital, Outpatient Diagnostic and Treatment Center, and the Primary Care Center. He said the cost of burying the utilities (\$2.9 million) will be paid from the consolidated project's budget. Chairman Haydon said no further action was necessary for this project.

Chairman Haydon then introduced Finance Cabinet Secretary Kevin Flanery to discuss alternative project construction delivery methods. Secretary Flanery introduced Commissioner Armond Russ, Department for Facilities Management. Secretary Flanery first discussed the design/build construction delivery method. He said the Finance and Administration Cabinet currently has three projects which will utilize the design/build methodology: the Morehead State University Family Housing project; the Kentucky Higher Education Assistance Authority office building; and the new Elliott County prison.

Secretary Flanery contrasted the design/build methodology with the traditional design-bid-build construction method. Under the traditional method, an architect/engineer is selected by a committee, and the project is then designed. Once the plans are completed, the project is bid, and a general contractor constructs the project.

Secretary Flanery said when using design/build, an architect/engineer consultant is selected by a committee to do very preliminary design and assist in preparing a Request for Proposals (RFP) to procure a design/build team. The selection of a design/build team is a two-part process. In the first phase of the process, a committee selects the top three applicants based on qualifications. Interviews are then conducted and scores are tallied by the selection committee based on qualifications and project specific proposals. Projects are then scored based on price.

Secretary Flanery said benefits of using the design/build construction method include: a guaranteed maximum price (GMP) with any cost savings below the GMP reverting to the owner; flexibility in scheduling for "fast tracking"; elimination of an architect's "bias to design"; early establishment of project budget and schedule; minimal change orders because the architect and the construction group are on the same team; and warranty for all work. Secretary Flanery said one of the main benefits of design/build is the time savings it provides because some construction can begin before the design is complete. Based on research the Cabinet has done, on a typical \$15 million building, using design/build can cut the time on a project from about 1,100 days to about 780-800 days. Secretary Flanery said when using the traditional design-bid-build, all plans must be completed before construction can begin. Secretary Flanery also indicated having a designer and builder on the same team avoids adversarial relationships and promotes a single source of responsibility. Projects that are best suited for design/build are those where the project scope is certain and definite, where time is a primary concern, or where the using agency is sophisticated in facility design.

Secretary Flanery noted the Finance Cabinet is also executing two projects through a management method referred to as "Construction Management (CM)-not-at-Risk": the Eastern Kentucky Veterans Center and the Western Kentucky Veterans Center.

Under "CM-not-at-Risk" the owner acts as the general contractor and hires a construction manager to oversee the project. The project is bid out in multiple bid packages, but "CM-not-at-Risk" does not guarantee a maximum price. This method is an additional management service (rather than a delivery system) to expedite bringing a facility in on time and in budget.

The Cabinet is also considering two projects using a project delivery method typically referred to as "CM-at-Risk". Under "CM-at-Risk" the construction manager is selected through a two-phase RFP process, parallel to or soon after the architect/engineer

is selected. The selection is based on qualifications, experience, references, and cost. The construction manager works with the architect during the design phase to estimate cost, conduct value engineering, keep the project within budget, and offer scheduling suggestions. The construction manager provides a guaranteed maximum price at the conclusion of Phase B design. From that point on the construction manager acts similar to a general contractor, bonding the project and overseeing construction. The construction manager is financially at risk to bring the project in on time and in budget. In summary, Secretary Flanery said the benefits of "CM-at-Risk" include: using expertise of the CM in cost, scheduling and value engineering, early knowledge of project costs, and management of risks.

Secretary Flanery said the Construction Management Association of America recommends using "CM-not-at-Risk" for larger complex projects and "CM-at-Risk" for smaller less complex projects. He said the state needs to have as many alternative construction delivery methods as possible considering the volume of projects, in order to better control budgets and project time schedules.

Representative Wayne said the state utilizes the design-bid-build construction method primarily to ensure objectivity and fairness in the construction process since awards are based on lowest sealed bid. He expressed concerns about the subjectivity involved in awarding contracts under the alternative methods, and asked Secretary Flanery for assurance that objectivity will be retained in the procurement process.

Secretary Flanery said the state needs to be innovative, but procurement should be done as objectively as possible, which he intends to do. He assured the Committee the statutes authorize the Cabinet to use these alternative construction processes. He said they are already using very similar processes for selection of architects and engineers. The RFP sets out the criteria on how an individual design/build firm or a construction manager is to be selected.

Representative Wayne asked if the statutes regarding capital construction need to be tightened to guarantee objectivity in the construction award process. Secretary Flanery said he did not think the statutes need to be tightened since the statutes are very clear that awards must be based on objective, measurable criteria. However, he added that they will be looking at the process between now and January 1 to determine if any statutory changes are needed.

Representative Wayne asked if the Morehead State University contract will be reviewed by the Government Contract Review Committee. Secretary Flanery said that the Committee had been given a copy of the contract. Commissioner Russ said that they have not appeared before that Committee, and stated there are some questions about whether the Morehead contract is a personal service contract or a construction contract. Secretary Flanery said he did not have a preference as to which Committee reviews the projects.

Representative Wayne said objectivity is enhanced when legislators review what the Executive Branch does; that is the purpose of this Committee. Noting it is not clear in the statute which legislative oversight committee should review these projects, he said the legislature may need to consider this issue in the 2002 Regular Session. Secretary Flanery said he agreed on the need to clarify legislative review of these contracts.

Representative Damron asked how many states are using the design/build methodology on major construction projects at this time. Secretary Flanery said he did not know, but the Finance Cabinet has been working with several federal agencies that use it quite a lot. He said he would provide the Committee with further information. Commissioner Russ estimated that approximately 15 states are now beginning to use the design/build method.

In response to another question from Representative Damron, Commissioner Russ said since states are just now starting to use design/build, there is no history as to whether the process has worked well or not.

Representative Damron said his concern with the whole construction process is the same as Representative Wayne's, and the state needs to make sure there are sufficient safeguards built in to protect government employees from the perception that something is wrong with the construction award process. He said he would like to know what safeguards other states have adopted. Secretary Flanery said he would be happy to provide that information to the Committee.

Senator Buford said Senator Marshall Long plans to file a bill in the 2002 Regular Session to address the issue.

Chairman Haydon thanked Secretary Flanery for appearing before the Committee, and then asked Mr. Bill Hintze and Commissioner Russ to discuss the project report submitted by the Finance and Administration Cabinet.

Mr. Hintze reported a scope increase for the Morehead State University (MoSU) Dam Repair/Restoration project. This project was authorized during the 1998 General Assembly at a scope of \$800,000. He said the bid came in over budget by a total of \$45,000. He said the scope increase will be split equally between University Restricted Funds and the Postsecondary Education Deferred Maintenance and Government Mandates Pool.

Representative Wayne made a motion to approve the scope increase for the MoSU project. The motion was seconded and passed by voice vote. The revised project scope is \$845,000.

Representative Wayne asked if MoSU has made a decision on whether or not to operate a trailer park on land it acquired. Mr. Hintze said MoSU has decided not to operate the trailer park, and referred to a report by the Council on Postsecondary Education concerning the issue that would be transmitted to the Committee.

Mr. Hintze next discussed a federally-funded scope increase for the Hazard State Police Post project. This project was authorized by the 1998 General Assembly for \$1,450,000. This project was reviewed by the Committee at its May meeting. At that meeting, the Committee was told competitive bids were obtained for the project on April 6, 2001, and a contract was awarded to the low bidder. Shortly after the award, the Commissioner for the Kentucky State Police determined additional funds were needed to assure an adequate amount for unforeseen contingencies and submitted the request for a scope increase of \$148,437. Finance Secretary Flanery asked that the contractor delay work until the Committee reviewed that request. That overrun, which was approved by the Committee in May, is to be funded from federal forfeiture funds received through the federal courts and deposited into the Asset Forfeiture Account.

After the contract was awarded, Baldwin Contracting Inc. from Pikeville, the company which received the contract, advised the Cabinet they made a significant error in their bid and asked to be relieved of their obligation. Mr. Hintze said it was best for the state as well as the contractor to let him out of the contract. The Cabinet then contacted the second lowest bidder who by that time had other commitments and was unable to accept the contract. The third lowest bidder, Balis Campbell from Hazard, was then contacted and agreed to accept the award at the bid he originally submitted.

Mr. Hintze said in order to award the contract to the third lowest bidder, an authorization of an additional \$80,013 is necessary. Additional federal forfeiture funds are available for this cost overrun.

Representative Damron made a motion to approve the scope increase for the Hazard State Police Post project. The motion was seconded by Senator Jackson and passed by voice vote. The revised project scope is \$1,678,450.

Mr. Hintze next reported a \$1,153,050 scope increase for the Northpoint Training Center Old Hospital Building Stabilization project. The additional funds will be used for asbestos abatement and envelope stabilization (repairs to the roof, windows, and exterior work), and will be funded with \$1,024,933 from the federal Violent Offender Incarceration Program and \$128,117 from restricted agency funds.

Representative Wayne made a motion to approve the scope increase for the project. The motion was seconded by Senator Buford and passed by voice vote. The revised project scope is \$3,582,521.

Mr. Hintze reported that the Finance and Administration Cabinet has approved plans by Western Kentucky University to combine two projects: the Science Complex Renovation project and the South Central Kentucky Technology Center. Mr. Hintze said both projects will be located on the same premises, and the Finance Cabinet's Department for Facilities Management indicates savings of \$1.5 million if the two projects are combined. The scope of the projects combined is \$20 million. No further action was required for this project consolidation.

Mr. Hintze next reported three allocations from the Kentucky Heritage Land Conservation Fund for land acquisition and associated management costs: Green River State Forest, Henderson County - \$478,000 to purchase 580 adjoining acres; Croushorn Tracts, Harlan County - \$1,597,000 to purchase 1,597 acres; and White Oak Creek, Garrard County - \$414,400 for 193 forested acres along the Kentucky River. No further action was required for these land acquisitions.

Mr. Hintze next reported an allocation of \$900,000 from the Capital Construction and Equipment Purchase Contingency Account for the Department of Parks' Dale Hollow Lake Resort Park Golf Course and Club House. This project was authorized for \$6 million by the 1998 General Assembly as part of the Surplus Expenditure Plan. The additional \$900,000 is needed to meet the low construction bid. Mr. Hintze said because of budget problems, the golf course will not have all of the usual appurtenances that go with a golf course, and at some point they may have to put certain deleted items back into the project. To prevent further delay in the project, however, he said they are recommending making the award and moving forward with the basic construction contract.

In response to questions from Representative Marcotte, Mr. Hintze said there is \$19 million in the Contingency Account. He noted the Contingency Account has not been used much during this biennium, despite the multitude of projects underway. They have received good bids and have been awarding contracts on schedule and within budget. Also, as part of the Governor's Surplus Plan, additional funds were added to the account.

Representative Marcotte asked if during the next session the legislature will have to appropriate more money for golf course projects. Parks Commissioner Kenny Rapier said they will ask for an appropriation of approximately \$14 million to finish six golf courses - Dale Hollow, Pennyryle, Mineral Mounds, Grayson, Yatesville, and Kincaid State Parks.

In response to a question from Representative Wayne, Commissioner Rapier said the original contractor for the seven courses authorized in the 1998-2000 budget, Colbert-Burns & McDonnell Golf, knew the amount of money the state had allotted for the projects. He said the contractors assured them they could come within the budget, but they did not. The contract with Colbert-Burns & McDonnell Golf was canceled, and

Barge, Waggoner, Sumner & Cannon was hired as an architect for the Dale Hollow project. Commissioner Rapier said they now have a bid they can meet with the allocation from the Contingency Account.

Representative Wayne asked if the Department has plans for a more modest approach to completing this project if they do not receive funding from the legislature next year. Commissioner Rapier said instead of having a clubhouse, they could use a trailer, which is done at some golf courses. In addition, they could lease operating equipment.

In response to a question from Representative Wayne, Mr. Hintze said they threw out the original master plan developed by Colbert-Burns & McDonnell Golf, and are building more conventional state park golf courses than originally planned.

Representative Damron observed that part of the problem of having a national firm come into an area is when they design a golf course, they move so much earth and design the course to look like something on a Florida coast, as opposed to a mountain golf course through part of Kentucky. He said a lot of golfers who travel through the area like to play courses that better fit into the terrain. He said in the long run, by dropping the national firm, they may be constructing better golf courses.

In response to a question from Representative Damron, Commissioner Rapier said the revenue from the golf courses will more than satisfy the debt issued for them.

Representative Damron made a motion to approve the contingency allocation. The motion was seconded by Senator Buford and passed by voice vote. The revised project scope is \$6,900,000.

Commissioner Rapier invited the Committee to hold a future meeting at one of the state parks.

Chairman Haydon introduced Mr. Jim Abbott, Director, Division of Real Properties, to discuss three new lease contracts for the Finance and Administration Cabinet.

Mr. Abbott reported PR-3086, a temporary lease for the Department of Corrections in Fayette County. Because the current lessor is seeking a rent increase, the Division of Real Properties advertised for leased space, and in order to have time to complete the procurement process, the existing lease is being renewed temporarily. Rental costs will increase from \$9.60 per square foot to \$10.66 per square foot.

Representative Damron made a motion to approve PR-3086. The motion was seconded by Senator Leeper and passed by voice vote.

Mr. Abbott next reported PR-4491, a new lease contract for the Workforce Development Cabinet (WDC) in Fayette County. The Cabinet is seeking to consolidate WDC Department of Vocational Rehabilitation staff housed under PR-2552 and PR-2834, as well as 17 WDC staff presently working at Eastern State Hospital and five employees presently located in office space leased by the Department for the Blind. Mr. Abbott said there were a total of ten properties initially offered for consideration and four of the property owners submitted best and final proposals. Mr. Abbott said they are recommending the lease be awarded to Lexington National Plaza Operating Associates, Ltd. Partnership. The lease has a term of eight years, at a rental rate of \$15 per square foot including utilities and janitorial. The annual cost of the lease is \$225,945 and is 100% federally funded.

In response to a question from Representative Wayne, Mr. Abbott said in addition to the annual cost of the lease, the federal government will also pay relocation costs of \$57,000.

Representative Damron made a motion to approve PR-4491. The motion was seconded by Representative Marcotte and passed by voice vote.

Lastly, Mr. Abbott discussed PR-4495, a new lease contract for the Department of Juvenile Justice in Hardin County. The department is seeking to move its day treatment center program to a larger facility to comply with new federal regulations and guidelines. Mr. Abbott said five responses were received, and the division accepted a bid from Mr. John Greenwell, who offered new construction at a cost of \$112,273 annually (\$9.53 per square foot) for a term of eight years. The lease does not include utilities and janitorial services.

Representative Damron made a motion to approve PR-4495. The motion was seconded by Senator Buford and passed by voice vote.

Chairman Haydon then introduced Ms. Debby Milton, Secretary to the Kentucky Infrastructure Authority (KIA), to present one new project proposed for KIA assistance - a proposed \$329,594 Fund A (Federally Assisted Wastewater Revolving Loan Fund) loan for the City of Arlington, Carlisle County. The Fund A loan will be used to rehabilitate the City's existing wastewater collection system to correct infiltration and inflow issues. Ms. Milton said the sewer rates will increase from \$11.85/4,000 gallons to \$39/4,000 gallons. The loan has terms of 1.8% for 20 years.

Representative Wayne asked what the average water rate is for the area. Ms. Milton said she did not have that information, but Arlington residents have higher rates than other residents of Carlisle County.

In response to questions from Representative Wayne, Ms. Milton said the City of Arlington sought other funding sources for this project in hopes of lowering the water rates, but was unsuccessful. She added that the City's wastewater collection system needs to be rehabilitated, and there was not much public comment regarding the proposed rate increase.

Senator Jackson made a motion to approve the Fund A loan. The motion was seconded by Senator Leeper and passed by voice vote.

Chairman Haydon then called on Mr. Tom Howard, Deputy Director of the Office of Financial Management, to present the agency's bond activity report. Mr. Howard first reported a new bond issue: Morehead State University Housing and Dining System Revenue Bonds, Series P, dated July 1, 2001 (\$5,140,000). The proceeds will be used to install fire safety equipment at various residence halls and at the Lakewood Terrace Family Housing Complex.

Senator Jackson made a motion to approve the new bond issue for MoSU. The motion was seconded by Representative Wayne and passed by voice vote.

Next, Mr. Howard reported another new bond issue: Kentucky Higher Education Student Loan Corporation (KHESLC) Student Loan Revenue Bonds, 2000 Senior Series A and Subordinate Series B (\$150,000,000). The proceeds will be used to originate, acquire, or refinance student loans.

Representative Marcotte made a motion to approve the bond issue for KHESLC. The motion was seconded by Representative Wayne and passed by voice vote.

Mr. Howard presented a revised bond issue for the Kentucky Asset/Liability Commission General Fund Tax and Revenue Anticipation Notes, Series 2001. Mr. Howard said the size of the bond issue has increased from \$600 million to \$650 million. No further action was required for this issue.

Mr. Howard presented two follow-up reports: Kentucky Housing Corporation Housing Revenue Bonds, 2001 Series A (\$1,230,000), B (\$38,770,000), C (\$14,145,000), D (\$21,210,000) and E (\$10,000,000) and University of Kentucky Consolidated Educational Buildings Refunding Revenue Bonds, Series N, dated May 1, 2001 (\$18,795,000). Chairman Haydon said no action is required for these follow-up reports.

Lastly, Mr. Howard reported four new bond issues with School Facilities Construction Commission (SFCC) debt service participation: Breathitt County; McCracken County; Monroe County; and Powell County.

Senator Jackson made a motion to approve the school bond issues with SFCC debt service participation. The motion was seconded by Representative Wayne and passed by voice vote. Representative Damron abstained from the vote, citing a potential conflict of interest.

Chairman Haydon said there were twenty locally funded school bond issues submitted to the Committee for review this month: Ky. School Transportation Association Tax and Revenue Anticipation Notes, Series 2001; Bardstown Independent - 2 (Nelson Co.); Bath County; Bellevue Independent (Campbell Co.); Boone County; Campbellsville Independent (Taylor Co.); Carlisle County; Clark County; Fleming County; Franklin County; Fulton County; Harrison County; Jefferson County (2); Lewis County; Mason County; Mercer County; Montgomery County; and Nelson County. He said all disclosure information has been filed, and no further action on these bond issues is required.

With there being no further business, Senator Jackson made a motion to adjourn the meeting. The motion was seconded and passed by voice vote. The meeting adjourned at 2:35 p.m.